

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Stale or Moot Docketed Proceedings

1993 Annual Access Tariff Filings

CC Docket No. 93-193

1994 Annual Access Tariff Filings

CC Docket No. 96-45

**AT&T Communications Tariff FCC Nos. 1 and
2, Transmittal Nos. 5460, 5461, 5464
Phase II**

CC Docket No. 93-193

**Bell Atlantic Telephone Companies Tariff FCC
No. 1, Transmittal No. 690**

CC Docket No. 94-157

**NYNEX Telephone Companies Tariff
FCC No. 1, Transmittal No. 328**

WORLDCOM COMMENTS

WorldCom, Inc. (WorldCom) hereby submits its comments on the Order, Notice, and Erratum (Notice) in the above-captioned proceeding. In the Notice, the Commission asks parties to refresh the record regarding the rate base treatment of OPEBs. MCI Telecommunications Corporation (MCI), one of WorldCom's predecessor companies, filed a petition to suspend and investigate the LECs' 1996 tariff filings.

The Commission should issue a Designation Order and then bring its investigation of 1996 OPEBs-related tariff changes to a conclusion. Having suspended the LECs' 1996

annual access filings and instituted an investigation, Section 204(a) of the Act requires that the Commission rule on the lawfulness of those tariffs.¹

I. Inclusion of OPEB Costs in the Rate Base was Unlawful

The amended earnings reports that formed the basis of the LECs' revised sharing calculations and, ultimately, the LECs' proposed 1996 PCI changes, were unlawful because, as the Commission had consistently found in a series of orders predating the 1996 Tariff Order,² investors have no right to earn a return on zero-cost sources of funds such as the OPEBs-related amounts recorded in Account 4310.³

There is no merit to the LEC claim that the Part 65 rules in effect during 1992-1995 sanctioned the inclusion of OPEBs-related costs in the rate base despite the Commission's longstanding policy of excluding zero-cost funds. Rather, as the RAO Recission Order⁴ made clear, the Part 65 rules then in effect simply did not address the question of the rate base treatment of OPEBs-related costs. Indeed, the RAO Recission Order describes OPEBs-related costs as costs "for which the Part 65 rules do not specifically provide."⁵ And the Commission emphasized that the recission of RAO 20 was based solely on procedural considerations, not on a finding that the rate base treatment suggested in RAO 20 was at odds with the rules.⁶

¹ 47 U.S.C. § 204(a)(1).

² 1996 Annual Access Filings, Memorandum Opinion and Order, 11 FCC Rcd 7564 (1996) (1996 Tariff Order).

³ See Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, Report and Order, 3 FCC Rcd 269 (1987).

⁴ Responsible Accounting Officer Letter 20, Uniform Accounting for Postretirement Benefits Other than Pensions in Part 32, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 11 FCC Rcd 2957 (1996) (RAO Recission Order).

⁵ RAO Recission Order at ¶ 25.

⁶ Id. at ¶ 27.

Because the Part 65 rules then in effect did not “specifically provide” for the inclusion or exclusion of OPEBs-related costs from the rate base, the 1996 Tariff Order was correct to characterize the RAO Recission Order as “leaving open the question of the correct rate base treatment of OPEBs costs under current rules.”⁷ The Commission therefore can and should address the question of the correct rate base treatment of OPEBs-related costs during 1992-1995 in the investigation initiated by the 1996 Tariff Order and should find, consistent with its precedent, that such zero-cost sources of funds should be excluded from the rate base.

II. Commission Rules Prohibited the LECs from Restating Sharing for Prior Years

Even if the LECs were correct that the Commission rules in effect during 1992-1995 contemplated inclusion of OPEBs-related costs in the rate base – which they did not – the Commission’s rules did not permit the LECs to propose PCI changes based on revised 1992-1994 sharing amounts in their 1996 annual access filings.

First, there was no Commission order that permitted or required the LECs to restate their 1992-1994 earnings after they had closed their books for those years.⁸ Certainly, there is no merit to the LEC claim that the RAO Recission Order “mandated” the restatement of LEC earnings for 1992-1994.⁹ The RAO Recission Order does not even mention LEC earnings, much less permit or require the LECs to restate their earnings for 1992-1994, even

⁷ 1996 Tariff Order at ¶ 19.

⁸ The Commission has issued such orders in other cases. See, e.g., Southwestern Bell Telephone Company, Apparent Violation of the Commission’s Rules, Consent Decree Order, 7 FCC Rcd 7692 ¶ 11 (1992).

⁹ See 1996 Tariff Order at ¶ 12.

though the Commission was well aware that the LECs had been following the instructions of RAO 20 when reporting their earnings during those years.

Second, Section 65.600(d) of the Commission's rules required the LECs to submit their final rate of return reports within 15 months after the end of the monitoring period. Consequently, the LECs could not submit amended Form 492A reports for at least 1992 and 1993, absent a waiver of section 65.600(d).¹⁰ Because the LECs neither sought nor obtained such a waiver, the Commission should, at a minimum, reject the portion of the PCI increase based on amended 1992 and 1993 Form 492A reports.

Finally, even if the LECs were permitted to restate their earnings or submit amended earnings reports – which they were not -- the Commission's exogenous cost rules did not permit the LECs to claim exogenous cost changes based on revised sharing amounts for 1992-1994. The only sharing-related exogenous cost change permitted by the Commission's rules was one based on "base period earnings," i.e., earnings in the most recent calendar year.¹¹ Consequently, the LECs could not propose in their 1996 annual filings exogenous cost changes that were based on earnings from years prior to the "base period," i.e., prior to 1995.

¹⁰ LECs have obtained such waivers in other cases. See Bell Atlantic Telephone Companies, Petition for Waiver of Section 65.600(b) of the Commission's Rules, Memorandum Opinion and Order, 3 FCC Rcd 565 (1988).

¹¹ Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, Appendix B, Section 61.45(d)(2).

III. Conclusion

For the reasons stated herein, the Commission should issue a Designation Order and then bring its investigation of 1996 OPEBs-related PCI changes to a swift conclusion.

Respectfully submitted,
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April 8, 2003